

## REGULATION OF INTERSTATE AND FOREIGN COMMUNICATIONS BY WIRE AND RADIO, OR FOR OTHER PURPOSES

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JUNE 1, 1934.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

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Mr. RAYBURN, from the Committee on Interstate and Foreign Commerce, submitted the following

### REPORT

[To accompany S. 3285]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3285) to provide for the regulation of interstate and foreign communications by wire or radio, and for other purposes, having considered the same, report favorably thereon with an amendment, which is a substitute for the Senate bill, and recommend that the bill as so amended do pass.

#### I. INTRODUCTORY STATEMENT

In the summer of 1933 the Secretary of Commerce appointed an Interdepartmental Committee on Communications to consider a national communications policy. In its report that committee, among other things, recommended the establishment of a Federal Communications Commission to which should be transferred the jurisdiction of the Interstate Commerce Commission over common carriers by wire or wireless, of the Federal Radio Commission, and of the Postmaster General over telegraph companies and telegraph lines.

On February 26, 1934, the President sent the following message to Congress:

*To the Congress:*

I have long felt that for the sake of clarity and effectiveness the relationship of the Federal Government to certain services known as "utilities" should be divided into three fields: Transportation, power, and communications. The problems of transportation are vested in the Interstate Commerce Commission, and the problems of power, its development, transmission, and distribution, in the Federal Power Commission.

In the field of communications, however, there is today no single Government agency charged with broad authority.

The Congress has vested certain authority over certain forms of communications in the Interstate Commerce Commission, and there is in addition the agency known as the "Federal Radio Commission".

I recommend that the Congress create a new agency to be known as the "Federal Communications Commission", such agency to be vested with the authority now lying in the Federal Radio Commission and with such authority over communications as now lies with the Interstate Commerce Commission—the services affected to be all of those which rely on wires, cables, or radio as a medium of transmission.

It is my thought that a new commission such as I suggest might well be organized this year by transferring the present authority for the control of communications of the Radio Commission and the Interstate Commerce Commission. The new body should, in addition, be given full power to investigate and study the business of existing companies and make recommendations to the Congress for additional legislation at the next session.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *February 26, 1934.*

On February 27, 1934, bills to carry out the recommendations in the President's message were introduced in the House and in the Senate. Extensive hearings were held on the Senate bill which, as amended, was reintroduced as S. 3285, passed the Senate on May 15, 1934, and was referred to this committee.

This committee held hearings for several days on H.R. 8301, which was the companion bill to that originally introduced in the Senate, and has in executive session worked out a substitute bill which is herewith reported as a substitute for the Senate bill S. 3285.

While the Senate bill and the amendment here reported are alike in most respects, there are three principal differences which may be noted as follows:

(1) As passed by the Senate the bill repeals the Radio Act of 1927, as amended, and includes in title III provisions which are substantially the same as the provisions of that act. Certain temporary provisions of that act are not carried over into the Senate bill, and that bill contains certain new provisions not in that act. The amendment of this committee eliminates this title from the bill and substitutes a provision (title III, sec. 301) which transfers to the new commission all the functions of the Federal Radio Commission but leaves the provisions of the Radio Act of 1927, as amended, unchanged and adds no provisions to supplement that act. Both the Senate bill and the amendment provide for abolishing the Federal Radio Commission.

(2) The Senate bill includes an amendment adopted on the floor of the Senate exempting carriers engaged in interstate or foreign communication solely through physical connection with the facilities of a nonaffiliated carrier. The amendment retains this provision except that it makes such carriers subject to sections 201 and 205, providing for regulation of charges and prohibiting discriminations. Such carriers will not, however, be required to file schedules of charges.

(3) The Senate bill provides for the creation of two divisions within the Commission, to be known as the "Radio Division" and the "Telegraph and Telephone Division", and prescribes the jurisdiction of each division. The Senate bill is so written that these divisions would function practically as separate Commissions without their action being subject to review by the full Commission. The amendment here reported rejects this provision and substitutes therefor a provision patterned upon section 17 of the Interstate Commerce Act, authorizing the Commission to create within itself not more than three divisions and to provide for the performance of any of its work, provisions,

or functions through such divisions or through individual commissioners or boards of employees. The action of such divisions, individual commissioners, or boards is to be subject to rehearing in the discretion of the Commission.

In considering the bill, the committee had before it the comprehensive report made by Dr. W. M. W. Splawn, special counsel, on the subject of holding companies in the communications field. The bill as reported contains provisions designed to eliminate abuses, the existence of which this report reveals.

#### GENERAL PURPOSES OF THE BILL

The communications industry has been subject to disjointed regulation by several different agencies of the Government. The Interstate Commerce Commission has had jurisdiction over common carriers engaged in communication by wire or wireless since 1910, but has never set up any bureau within its organization designed to concentrate on this field. The Radio Commission has had jurisdiction since 1927 over the licensing of radio stations. Certain minor jurisdiction has been vested by a series of acts in the Postmaster General and the Chief Executive.

The report of the interdepartmental committee on communications and the hearings before both the House and Senate committees have shown the great need for the creation of one central body vested with comprehensive jurisdiction over the industry. In line with the President's message, it is the primary purpose of this bill to create such a commission armed with adequate statutory powers to regulate all forms of communication and to consider needed additional legislation. The bill is largely based upon existing legislation and except for the change of administrative authority does not very greatly change or add to existing law; most controversial questions are held in abeyance for a report by the new commission recommending legislation for their solution. Thus, it is provided that the commission shall make a report to Congress by February 1, 1935, recommending such amendments to the act as are in the public interest. In addition to this general mandate, section 215 expressly directs the commission to study and report upon the following subjects:

(1) Certain transactions of common carriers which may affect the charges made for services rendered to the public. These transactions include those relating to the furnishing of equipment, supplies, research, services, finance, or credit, whether by a single company or group of companies controlled by the same interests. The Commission is also directed to report on the desirability of requiring competitive bidding in cases where the same company or group of companies are both buyers and sellers.

(2) The methods by which, and the extent to which, telephone companies are furnishing telegraph services and telegraph companies are furnishing telephone services.

(3) The effect of exclusive contracts entered into by common carriers which prevent other competing carriers from locating offices in railroad depots, hotels, and other public places.

It is important to review the legislative history of the regulation of communications by the Interstate Commerce Commission. That body functions under an act of 1887 which has been many times

amended. It was originally created to regulate railroads and still is primarily concerned with the transportation field, but in 1910 an amendment to the Interstate Commerce Act made common carriers engaged in the transmission of intelligence by wire or wireless subject to its jurisdiction. While a series of minor amendments have followed this 1910 legislation, the act never has been perfected to encompass adequate regulation of communications, but has really been an adaptation of railroad regulation to the communications field. As a consequence, there are many inconsistencies in the terms of the act and also many important gaps which hinder effective regulation. In this bill the attempt has been made to preserve the value of court and commission interpretation of that act, but at the same time modifying the provisions so as to provide adequately for the regulation of communications common carriers.

## II. GENERAL ANALYSIS OF THE BILL

### TITLE I. GENERAL PROVISIONS

Section 1 contains a declaration of the purposes of and necessity for the legislation, and establishes the Federal Communications Commission.

Section 2 makes the bill applicable to all interstate and foreign communication by wire or radio, except that independent telephone companies engaged in interstate or foreign communication only through physical connections with another nonaffiliated carrier are subjected only to certain sections of the act designed to insure reasonableness of rates and no discrimination in service. The bill also exempts the intrastate business of any carrier.

Section 3 contains the definitions, which are for the most part taken from the Interstate Commerce Act, the Radio Act, and the international conventions.

Paragraph (h) of this section contains a definition of the terms "common carrier" and "carrier." Since a person must be a common carrier for hire to come within this definition, it does not include press associations or other organizations engaged in the business of collecting and distributing news services, which may refuse to furnish to any person service which they are capable of furnishing, and may furnish service under varying arrangements, establishing the service to be rendered, the terms under which rendered, and the charges therefor.

The bill upon which this committee held hearings (H.R. 8301) contained a definition of the terms "parent", "subsidiary", and "affiliated" for the purposes of those provisions of the bill which applied to parents and subsidiaries of common carriers subject to the act and persons affiliated with such carriers. The Senate bill and the amendment reported herewith both leave out these definitions since the persons intended to be covered are referred to in the Senate bill and the amendment as persons "directly or indirectly controlling or controlled by, or under direct or indirect common control with" any carrier subject to the act. It is believed that this method of referring to such persons is preferable to attempting to cover them through the use of the terms "parent", "subsidiary", and "affiliated". Many difficulties are involved in attempting to define such

terms. It is believed that a more satisfactory result will be reached by referring to such persons as in the Senate bill and the amendment. No attempt is made to define "control", since it is difficult to do this without limiting the meaning of the term in an unfortunate manner. Where reference is made to control the intention is to include actual control as well as what has been called legally enforceable control. It would be difficult, if not impossible, to enumerate or to anticipate the many ways in which actual control may be exerted. A few examples of the methods used are stock ownership, leasing, contract, and agency. It is well known that actual control may be exerted through ownership of a small percentage of the voting stock of a corporation, either by the ownership of such stock alone or through such ownership in combination with other factors.

Section 4 provides for a bi-partisan commission of 7 members, holding office for 7-year terms at a salary of \$10,000. It also provides for the appointment of personnel and contains other provisions usual in the case of the creation of a new administrative body.

Section 5 authorizes the commission to create not more than three divisions within its membership which have authority to hear and determine cases in the same manner as the Interstate Commerce Commission. It is believed that the commission may find it desirable to set up separate divisions having jurisdiction, respectively, over radio, telegraph, and telephone. The section also follows the Interstate Commerce Act in authorizing action through individual commissioners and boards of employees.

## TITLE II. COMMON CARRIERS

This title sets forth the duties and obligations of common carriers engaged in communication service and the powers of the Commission relating thereto. For the most part it follows provisions of the Interstate Commerce Act now applicable to communications or adapts some provisions of that act now applicable only to transportation.

Section 201(a) requires carriers to furnish service upon reasonable request and to establish with other carriers physical connections, through routes, through rates, and divisions of through rates. It is adapted from section 1 (4) of the Interstate Commerce Act.

Section 201 (b) requires reasonable charges, and limits the contracts for exchange of services between carriers to such contracts as the Commission deems "not contrary to the public interest." It is adapted from section 1 (5), (6) of the Interstate Commerce Act.

Section 202 combines and condenses sections 2 and 3 (1) of the Interstate Commerce Act, making unjust discrimination and undue preference unlawful.

Section 203 (a) adapts section 6 (1), (6) of the Interstate Commerce Act to communications. It requires publication and filing of schedules of charges, classifications, regulations, and practices. Subsections (b), (c), (d), and (e) are all copied from section 6, paragraphs (3), (7), (9), and (10), respectively, of the Interstate Commerce Act.

Section 204 authorizes suspension and investigation of proposed changes in such schedules. It is adapted from section 15 (7) of the Interstate Commerce Act so as to apply to communications.

Section 205 follows sections 15 (1) and 16 (8) of the Interstate Commerce Act, authorizing the Commission to prescribe just and reasonable charges, including maximum and minimum charges.

Sections 206, 207, 208, and 209 are the present law in sections 8, 9, 13 (1), and (2), and 16 (1) of the Interstate Commerce Act, and deal, respectively, with liability for damages, complaints, reparation, and orders for payment of money.

Section 210 permits railroads and communication companies to continue to exchange franks and passes under rules prescribed by the Commission. It adapts the language of section 1 (7) of the Interstate Commerce Act.

Section 211 (a) requires filing of all contracts between carriers engaged in the communication business and between communication companies and other common carriers not covered by this bill. It is similar to section 6 (5) of the Interstate Commerce Act. Subsection (b) authorizes the Commission to require the filing of additional contracts, but permits it to waive the filing of minor contracts.

Section 212 follows the text of section 20 a (12) of the Interstate Commerce Act and extends the prohibition against interlocking directorates to communication carriers. It also prohibits any officer or director of a carrier from profiting out of the funds of the capital account. It will not prohibit a corporate official from selling securities which he owns personally and not in an official capacity.

Section 213 differs in some respects from the valuation provisions of section 19 (a) of the Interstate Commerce Act. Except with respect to annual reports of improvements and retirements, the bill is permissive whereas the Interstate Commerce Act is mandatory. The bill omits the detailed requirements of that act for ascertainment and report of various elements of value and does not repeat the elaborate procedural provisions of the act relating to determination of tentative and final valuation. The Interstate Commerce Commission is directed, upon request of the Communications Commission, to complete the valuations now in progress of the property of communication carriers.

Section 214 requires certificates of public convenience and necessity for the construction of new interstate lines or extensions of lines, and for the acquisition of lines. It is similar to section 1(18-22) of the Interstate Commerce Act relating to construction. No certificates are required for the construction of local lines or for wires or cables added to existing pole lines or conduits. The Commission is also permitted to authorize temporary or emergency service without such certificates.

Section 215, authorizing the Commission to make certain investigations and reports, has been referred to above.

Section 216 makes the bill applicable to receivers and trustees of carriers. A similar provision is in the Interstate Commerce Act.

Section 217 provides that the carriers shall be liable for the acts and omissions of its agents and is adapted from the Elkins Act.

Section 218 is based on section 12 (1) of the Interstate Commerce Act and makes it the duty of the Commission to keep itself informed of the conduct of the carriers' business and also of new developments in the art of communication.

Section 219 is based on section 20 (1) and (2) of the Interstate Commerce Act, but also requires annual reports of affiliates of carriers

as well as of carriers and requires that all reports shall include statement of the privileges of each class of stock, the names of the 30 largest holders of any class of stock and the amount of stock held by each, and the names of all officers and directors and the amount of salary, bonus, and all other compensation paid to each.

Section 220 (a-g) is taken from section 20 (5-8) of the Interstate Commerce Act dealing with accounts, records, and memoranda. It also adds the new provisions found in subsections (h), (i), and (j). Subsections (h), (i), and (j) are responsive to the requests of the State commissions that the present law be changed so as to permit those bodies to exercise, for State purposes, certain jurisdiction over accounting systems and methods of depreciation accounting.

Section 221 (a) permits mergers of telephone companies and is copied verbatim from section 5 (18) of the Interstate Commerce Act. Paragraphs (b), (c), and (d) conform to recommendations of the State commissions, and will enable those commissions, where authorized to do so, to regulate exchange services in metropolitan areas overlapping State lines.

### TITLE III. PROVISIONS RELATING TO RADIO

Title III consists of a single section which abolishes the Radio Commission and transfers its functions under the Radio Act of 1927<sup>1</sup> to the Communications Commission.

### TITLE IV. PROCEDURAL AND ADMINISTRATIVE PROVISIONS

This title contains procedural and administrative provisions substantially the same as those of the Interstate Commerce Act.

Section 401 (a-c) is based on sections 20 (9), 16 (12), and 12 (1) of the Interstate Commerce Act. It provides generally for enforcement of the act and of orders of the Commission in the district courts of the United States.

Section 401 (d) extends the Expediting Act (38 Stat. 219), to the orders of the Communications Commission.

Section 402 provides for court review of decisions of the Commission. The review now applicable to orders of the Interstate Commerce Commission will apply to suits to enforce, enjoin, set aside, annul, or suspend orders of the Communications Commission under this act, but this section will not, of course, apply in the case of matters arising in connection with the exercise of the function transferred by title III.

Section 403 is adapted from section 13 (2) of the Interstate Commerce Act. It authorizes the Commission to make an investigation upon its own motion of matters concerning which complaint may be made to the Commission.

Section 404 requires the Commission to make written decisions and orders. It is similar to section 14 (1) of the Interstate Commerce Act.

Section 405 is adapted from section 16 (a) of the Interstate Commerce Act with respect to the rehearing of cases.

Section 406, in effect, makes section 23 of the Interstate Commerce Act relating to the furnishing of facilities applicable to communications.

Sections 407 and 408 follow sections 16 (2) and 15 (2), respectively, of the Interstate Commerce Act with respect to enforcement of Commission orders.

Section 409 relates to proceedings before the Commission. The section is largely based upon sections 12, 17 (1), 18, 19, and 20 (10) of the Interstate Commerce Act. Examiners and directors, as well as members of the Commission, are authorized to conduct hearings, administer oaths, and issue subpoenas, but examiners are restricted from hearing certain cases involving policy, the revocation of a station license, or new developments in radio.

Section 410 provides that the Commission may confer, as to rates, charges, practices, classifications, and regulations, with any State commission having jurisdiction. It is based on section 13 (2) of the Interstate Commerce Act.

Section 411 carries forward provisions of the Elkins Act and of section 16 (4) of the Interstate Commerce Act relating to joinder of parties and payment of money.

Section 412 is based upon section 16 (13) of the Interstate Commerce Act relating to the preservation of schedules of charges, classifications, contracts, and statistics contained in annual reports as public record.

Section 413 requires every common carrier subject to the act to maintain an agent in the District of Columbia for the purpose of service of process and orders of the Commission. It is based on present law applicable to carriers subject to the Interstate Commerce Act.

Section 414 provides that remedies under this act are in addition to remedies afforded by other statutes or by common law. It follows section 22 (1) of the Interstate Commerce Act.

Section 415 limits the time for recovery of unlawful charges or of undercharges. This section provides for shorter periods of limitation than are provided in section 16 (3) of the Interstate Commerce Act.

Section 416, relating to service of orders, is adopted from section 16 (5-7) of the Interstate Commerce Act.

#### TITLE V. PENAL PROVISIONS—FORFEITURES

Section 501 is similar to section 10 (1) of the Interstate Commerce Act and section 33 of the Radio Act. It is the general penalty section for violations of the act.

Section 502 provides penalties for violation of rules and regulations of the Commission. It is adapted from section 32 of the Radio Act.

Section 503 provides for forfeitures in cases of rebates and offsets, and follows the provisions of the Elkins Act.

Section 504 provides that forfeitures are payable into the Treasury and recoverable by civil suit. It is based on section 16 (9-10) of the Interstate Commerce Act.

Section 505 relating to venue is taken from section 34 of the Radio Act and the Elkins Act.

#### TITLE VI. MISCELLANEOUS PROVISIONS

Section 601 transfers to the Commission duties, powers, and functions of the Interstate Commerce Commission and the Postmaster General under certain provisions of law (other than the Interstate



Commerce Act) not repealed by the bill; while section 602 repeals the provisions of the Interstate Commerce Act insofar as they relate to communications. The latter section also makes certain changes in other law, including the Clayton Act, made necessary by the setting up of the new Commission and conferring upon it jurisdiction over communications.

Section 603 makes necessary transfers of employees, records, property, and appropriations.

Section 604 defines the effect of transfers, repeals, and amendments made by the bill.

Section 605, prohibiting unauthorized publication of communications, is based upon section 27 of the Radio Act, but is also made to apply to wire communications.

Section 606 gives the President power over wire and radio communications in time of war. The section also makes it unlawful in time of war to obstruct or retard interstate or foreign radio communication. It is adapted from the war powers granted by act of Congress of August 10, 1917 (40 Stat. 272).

Sections 607, 608, and 609, respectively, contain the effective date, separability clause, and the short title.

